

H-8305

1 Amend House File 2451 as follows:

2 1. By striking everything after the enacting clause  
3 and inserting:

4 <Section 1. Section 135B.9, Code 2009, is amended  
5 to read as follows:

6 **135B.9 Inspections and qualifications for**  
7 **hospital inspectors — protection and advocacy agency**  
8 **investigations.**

9 1. The department shall make or cause to be made  
10 inspections as it deems necessary in order to determine  
11 compliance with applicable rules. Hospital inspectors  
12 shall meet the following qualifications:

13 a. Be free of conflicts of interest. A hospital  
14 inspector shall not participate in an inspection or  
15 complaint investigation of a hospital in which the  
16 inspector or a member of the inspector's immediate  
17 family works or has worked within the last two years.  
18 For purposes of this paragraph, "immediate family  
19 member" means a spouse; natural or adoptive parent,  
20 child, or sibling; or stepparent, stepchild, or  
21 stepsibling.

22 b. Complete a yearly conflict of interest  
23 disclosure statement.

24 c. Biennially, complete a minimum of ten hours of  
25 continuing education pertaining to hospital operations  
26 including but not limited to quality and process  
27 improvement standards, trauma system standards, and  
28 regulatory requirements.

29 2. In the state resource centers and state mental  
30 health institutes operated by the department of human  
31 services, the designated protection and advocacy  
32 agency as provided in section 135C.2, subsection 4,  
33 shall have the authority to investigate all complaints  
34 of abuse and neglect of persons with developmental  
35 disabilities or mental illnesses if the complaints are  
36 reported to the protection and advocacy agency or if  
37 there is probable cause to believe that the abuse has  
38 occurred. Such authority shall include the examination  
39 of all records pertaining to the care provided to the  
40 residents and contact or interview with any resident,  
41 employee, or any other person who might have knowledge  
42 about the operation of the institution.

43 Sec. 2. Section 235E.2, subsection 1, paragraph a,  
44 Code Supplement 2009, is amended to read as follows:

45 a. The department shall receive and evaluate  
46 reports of dependent adult abuse in facilities and  
47 programs. The department shall inform the department  
48 of human services of such evaluations and dispositions  
49 for inclusion in and those individuals who should be  
50 placed on the central registry for dependent adult

1 ~~abuse information pursuant to section 235B.5, 235E.7.~~  
2 If the department believes the situation involves  
3 an immediate danger to the public health, safety,  
4 or welfare requiring immediate agency action to  
5 seek emergency placement on the central registry,  
6 the department may utilize emergency adjudicative  
7 proceedings pursuant to section 17A.18A.

8 Sec. 3. Section 235E.2, subsection 10, Code  
9 Supplement 2009, is amended to read as follows:

10 10. The department shall adopt rules which require  
11 facilities and programs to separate an alleged  
12 dependent adult abuser from a victim following an  
13 allegation of perpetration of dependent adult abuse  
14 and prior to the completion of an investigation of  
15 the allegation. Independent of the department's  
16 investigation, the facility or program employing  
17 the alleged dependent adult abuser shall conduct an  
18 investigation of the alleged dependent adult abuse and  
19 determine, what, if any, employment action should be  
20 taken including but not limited to placing the alleged  
21 dependent adult abuser on administrative leave or  
22 reassigning or terminating the alleged dependent adult  
23 abuser as a result of the department's investigation.  
24 If the facility or program terminates the alleged  
25 dependent adult abuser as a result of the department's  
26 investigation, the alleged dependent adult abuser shall  
27 disclose such termination to any prospective facility  
28 or program employer.

29 Sec. 4. Section 235E.2, subsection 12, Code  
30 Supplement 2009, is amended to read as follows:

31 12. An inspector of the department may enter any  
32 facility or program without a warrant and may examine  
33 all records pertaining to residents, employees, former  
34 employees, and the alleged dependent adult abuser as  
35 long as the inspector informs the person in charge  
36 of the facility or program, or the person's designee,  
37 that the inspector is investigating an alleged case of  
38 dependent adult abuse. If upon entry, the inspector  
39 has knowledge of or learns during the course of an  
40 investigation that alleged dependent adult abuse is  
41 suspected or is being investigated, the inspector  
42 shall inform the person in charge that the inspector  
43 is investigating an alleged case of dependent adult  
44 abuse. An inspector of the department may contact or  
45 interview any resident, employee, former employee, or  
46 any other person who might have knowledge about the  
47 alleged dependent adult abuse. Prior to the interview,  
48 the department shall provide written notification to  
49 the person under investigation for dependent adult  
50 abuse that the person is under investigation for

1 dependent adult abuse, the fact situation and the  
2 nature of the abuse being investigated, the possible  
3 civil consequences of founded abuse, the requirement  
4 that the department forward a report to law enforcement  
5 if the department's investigation reveals a potential  
6 criminal offense, that the person has the right to  
7 retain legal counsel at the person's expense and may  
8 choose to have legal counsel, union representation,  
9 or any other desired representative employed by  
10 the facility present during the interview, and the  
11 fact that the person has the right to decline to  
12 be interviewed or to terminate an interview at any  
13 time. The person under investigation shall inform the  
14 department of the representatives desired to be present  
15 during the interview and not unreasonably delay the  
16 interview to organize their representatives' presence  
17 at the interview. An inspector may take or cause to  
18 be taken photographs of the dependent adult abuse  
19 victim and the vicinity involved. The department shall  
20 obtain consent from the dependent adult abuse victim  
21 or guardian or other person with a power of attorney  
22 over the dependent adult abuse victim prior to taking  
23 photographs of the dependent adult abuse victim.

24 **Sec. 5. NEW SECTION. 235E.6 Dependent adult abuse**  
25 **finding — notification to employer and employee.**

26 Upon a finding of founded dependent adult abuse  
27 by a caretaker, the department shall provide written  
28 notification of the department's findings to the  
29 caretaker and the caretaker's employer. In addition,  
30 the written notification shall detail the consequences  
31 of the findings and placement on the dependent adult  
32 abuse registry, the caretaker's appeal rights, and  
33 include a separate appeal request form. The written  
34 appeal request form shall clearly set forth that the  
35 caretaker shall not be placed on the dependent adult  
36 abuse registry until final agency action is taken if an  
37 appeal is filed within fifteen days.

38 **Sec. 6. NEW SECTION. 235E.7 Appeal process —**  
39 **dependent adult abuse.**

40 1. Upon the department's finding of dependent adult  
41 abuse, the caretaker shall file an appeal request with  
42 the department within fifteen days of receiving the  
43 notification of the finding of abuse. If a request  
44 for an appeal is filed within fifteen days of the  
45 notification of the finding, the department shall not  
46 place the caretaker on the registry until final agency  
47 action is taken. For a request for an appeal filed  
48 within fifteen days of the notification of the finding,  
49 the contested case hearing shall be held within sixty  
50 days of the request. The caretaker may extend the

1 hearing timeframe by thirty days one time. Additional  
2 requests for an extension must be agreed upon by  
3 all parties or for good cause. The department shall  
4 issue a determination of final agency action within  
5 forty-five days of the contested case hearing. Upon  
6 final agency action, further appeal rights shall be  
7 governed by chapter 17A.

8 2. If a caretaker fails to request an appeal within  
9 fifteen days, the caretaker shall have an additional  
10 forty-five days to file an appeal pursuant to chapter  
11 17A. However, the caretaker's name shall be placed on  
12 the registry pending the outcome of the appeal.

13 3. If the caretaker requests an appeal within  
14 fifteen days, the caretaker may waive the expedited  
15 hearing under subsection 1 to proceed under chapter  
16 17A, but the caretaker's name shall be placed on the  
17 registry pending the outcome of the appeal.

18 Sec. 7. STUDY. The legislative council is  
19 requested to establish an interim study committee to  
20 evaluate due process requirements relating to child  
21 abuse and dependent adult abuse under Code chapters  
22 235A and 235B. The committee shall issue a report of  
23 its recommendations to the general assembly by January  
24 15, 2011.>

25 2. Title page, by striking lines 1 through 3 and  
26 inserting: <An Act relating to health care facilities  
27 and programs, including hospital inspector requirements  
28 and dependent adult abuse.>

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HUNTER of Polk